

Court No. - 7

Case :- WRIT - A No. - 30027 of 2019

Petitioner :- Vijay Prakash Upadhyaya And 9 Ors.

Respondent :- State Of U.P. Thru Prin.Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Dr. V.K. Singh, Krishna Madhav Shukla, Piyush Pathak, Sharad Pathak

Counsel for Respondent :- C.S.C., Neeraj Chaurasiya

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioners and learned Standing counsel appearing on behalf of the respondents no. 1 to 5.
2. Despite notice being sent to the respondent no. 7, nobody has put in appearance and as per office report dated 10.12.2020, the service on respondent no. 7 is deemed sufficient
3. Short counter affidavit has been filed by Sri Pankaj Patel, Advocate on behalf of respondent no. 6.
4. As only a short question of law is involved as such, the Court proceeds to hear and decide the matter finally.
5. A perusal of short counter affidavit filed on behalf of respondent no. 6 would indicate that the stand taken by the petitioners in the petition is being supported.
6. Instant petition has been filed praying for quashing of the order dated 03.08.2019 passed by the respondent no. 7, a copy of which is annexure 1 to the writ petition. A further prayer is for a mandamus commanding the respondents to pay salary to the petitioners from the State exchequer as well as arrears of salary.
7. Bereft of unnecessary details, the facts of the case as set forth by the petitioners are that all the petitioners were appointed prior to the year 2000 in the attached primary section of the respondent no. 6- Institution. Vide order dated 26.11.2015, a copy of which is annexure 8 to the writ petition, the attached primary section of the institution was granted financial approval.
8. Subsequent thereto, when the petitioners were not paid salary they staked their claim for payment of salary and upon being unsuccessful filed Writ Petition No. 2796 (SS) of 2019 Inre; Vijay Prakash Upadhyaya And 9 Ors Vs. State of U.P and Ors. This Court vide judgment and order dated 01.02.2019, a copy of which is annexure 12 to the writ petition required the petitioners to prefer a fresh representation to the Assistant Director of Education raising all the pleas and the competent authority was required to decide the representation of the petitioners by means of reasoned and speaking order.

9. In pursuance thereof, the competent authority vide order impugned dated 03.08.2019, a copy of which is annexure 1 to the writ petition has considered the claim of the petitioner but rejected the same.

10. Raising a challenge to the said order, the instant petition has been filed.

11. Learned counsel for the petitioners contends that a perusal of the order impugned would indicate while rejecting the claim of the petitioner for payment of salary, the competent authority has indicated that the appointment of the petitioners has not been made in terms of Rule 9 of the Uttar Pradesh Recognized Basic Schools (Recruitment & Conditions of Service of Teachers and other conditions) Rules, 1975 (hereinafter referred to as "Rules, 1975") and hence the petitioners are not entitled for salary.

12. The argument of learned counsel for the petitioners is that the admittedly the petitioners were appointed in the attached primary section of the institution and as such, their appointment was governed by the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "Rules, 1978") and once the competent authority has passed an order dated 26.11.2015 whereby the primary section of the institution has been granted financial approval and the petitioners were working in the attached primary section consequently, it cannot be a case that the appointment of the petitioners should have been made under the Rules, 1975 so as to entail them for payment of salary from the State exchequer. He contends that this aspect of the matter has not even considered by the competent authority while rejecting the claim of the petitioners.

13. On the other hand, learned Standing counsel is unable to indicate as to how when the petitioners were appointed in the attached primary section as such, their case for appointment has to be covered by the Rules, 1975 which pertains to appointment in a basic school and the petitioners were appointed in the attached primary section as such, the rules applicable for their appointment would be the Rules, 1978.

14. This aspect of the matter has also not been considered by the competent authority while rejecting the claim of the petitioners vide the order impugned dated 03.08.2019.

15. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 03.08.2019, a copy of which is annexure 1 to the writ petition is quashed. The matter is remitted to the competent authority to pass a fresh order in accordance with law and the relevant rules governing the subject.

16. Let an order be passed within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 8.12.2023

Pachhere/-